* **HIGH COURT OF DELHI : NEW DELHI**

Date of decision: September 06, 2007

\+ **W.P (C) No. 1260 of 2003**

% Feroz Ahmed .....Petitioner
Through: Mr. N.A. Siddiqui, Advocate

versus

Delhi Development Authority & Ors. ..... Respondents
Through: Ms. Anusuya Salwan, Advocate

CORAM:

HON"BLE MR.JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.(Oral)

1. Learned counsel for the respondent has produced before us a copy of the notification dated 25th July, 2007 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training in exercise of its power in sub Section (2) of Section 14 of the Administrative Tribunals Act. As per this notification, a number of

corporations/societies/other authorities have been brought within the umbrella of Central Administrative Tribunal. The date on and from which provisions of sub Section (2) of Section 14 of the said Act would be applied is specified as 1st August, 2007. The Delhi Development Authority is also included in the said schedule to the said notification at serial no. 57. Thus, from 1st August, 2007, the jurisdiction is now vested with the Central Administrative Tribunal Act to deal with the service matters of the employees/officials of the Delhi Development Authority. Section 29 sub Section (2) stipulates that all pending matters are to be transferred to the Central Administrative Tribunal which are pending before a Court or other Authority immediately before the date with effect from which jurisdiction is conferred on the Central Administrative Tribunal in relation to any local or other authority or corporation or society, being a suit or proceeding, the cause of action, whereon it is based, is such that it would have been, if it had arisen after the said date, within the jurisdiction of the said Tribunal. It cannot be disputed that an employee of the DDA who has to bring such an action after the dates specified, i.e., 1st August, 2007 has to approach the Central Administrative Tribunal. Therefore by virtue of Section 29 (2) of the aforesaid Act, the present proceedings which involve the service related disputes,

are to be transferred to the Central Administrative Tribunal.

2. Learned counsel for the petitioner submits that the petitioner has challenged the vires of the Rules and therefore the matter has to be considered by this Court only under Article 226 of the Constitution of India, as the Central Administrative Tribunal does have any such power. This argument is wholly misconceived in view of 7 Judges judgment of the Supreme Court in the case of ***L. Chandra Kumar vs Union of India*** AIR (1997) SC 1125. Paragraph 90 from the said report is relevant and the same reads as follows:-

> "90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Article 226/227 cannot be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Court and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas to involve the consideration of constitutional questions on a regular basis ; for instance in service law

> matters, a large majority of cases involve in interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter."

3. Learned counsel for the petitioner also submitted that in this case, Supreme Court has given specific direction in its judgment dated 29th September, 2006 directing the Division Bench of this Court to hear the present petition. We may note that the present petition filed by the petitioner was dismissed by a single Judge of this Court vide order dated 13th January, 2004 and LPA was also dismissed by the Division Bench. Against this judgment, the petitioner had appealed to the Supreme Court and the Supreme Court set aside the judgments of this Court vide aforesaid judgment dated 29th September, 2006 and remanded the case back to this Court with direction that having regard to

the importance of the question involved, the matter be considered by the Division Bench. Following directions were given in this behalf which are referred to by learned counsel for the petitioner :-

> "We are, therefore, of the opinion that the matter requires a fresh consideration at the hands of the High Court. The Writ Petitioner – Appellant would be entitled to file an application for amendment of writ petition questioning the validity of the said purported rules. Respondents shall file a counter affidavit within two weeks form the date of filing the said application. Keeping in view the importance of the question involved, we are of the opinion that the matter should be considered by the Division Bench itself. We, however, set aside the impugned judgment of the of the Division Bench and remit the matter for fresh consideration in accordance with the directions and observations made hereinbefore. For the views we have taken, it is not necessary to deal with the other contentions raised by the parties herein at this stage. In view of the fact that the matter is pending for a long time, we would request the High Court to consider the desirability of disposing of the matter expeditiously and preferably within wight weeks from the date of receipt of copy of this order."

4. However, those directions were given as, at that time, it was the High Court which could have dealt with such a matter as there were no notification under Section 14(2) of the Central Administrative Tribunal Act issued earlier, which is a subsequent development as the notification aforesaid is dated 25th July, 2007.

5. Having regard to the legal position after the issuance of the said notification, since the matter is now to be considered by the Central Administrative Tribunal, the petitioner cannot rely upon the aforesaid direction to contend that only this Court should consider the Writ Petition and matter be not sent to Central Administrative Tribunal. Therefore, we reject this contention of the petitioner.

6. The matter is accordingly transferred to the Central Administrative Tribunal. Registry should send the records of this case to the Central Administrative Tribunal, Principal Bench, New Delhi. Parties shall appear before the Tribunal on 3rd October, 2007.

A.K.SIKRI, J.

VIPIN SANGHI, J.

September 06, 2007
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